

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 13254 of 2004

AND

CONTEMPT CASE NO.1639 OF 2004

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W.P.No.13254 of 2004:

Between:

Y.Narayana Murthy, S/o. Appala Naidu,
Occu: Contract Junior Lineman, Nagaram Village,
Makavarapalem Mandal, Visakhapatnam District.

..... PETITIONER

AND

1. The Chairman & Managing Director, A.P.Eastern Power
Distribution Co. Ltd., Vizag.
2. The Superintendent Engineer, A.P.E.P.D.C.L., Vizag.
3. The Divisional Engineer, A.P.E.P.D.C.L., Anakapally.
4. The Assistant Engineer Operation, A.P.E.P.D.C.L., Kotauratla,
Vizag.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 3rd respondent in terminating the service of

the petitioner vide Proc. Memo No.DEE.O.AKP.AD.U. D.No.610/2004 dated 18-06-2004 on the ground that the petitioner was involved in a Crime under Sec.498 (A) I.P.C. as highly illegal and arbitrary and set aside the same and consequently direct the respondents to continue the petitioner as Contract Jr. Lineman and also consider his case for absorption in regular vacancies along with others.

Counsel for the Petitioner: MR.N.M.KRISHNAIAH

Counsel for the Respondent Nos.1 to 4 : MR.M.SUBBA RAO

C. C. No.1639 OF 2004

Between:

Y.Narayana Murthy, S/o. Appala Naidu,
Occu: Contract Junior Lineman, Nagaram Village,

Makavarapalem Mandal, Visakhapatnam District.

..... PETITIONER

AND

G.Prasada Rao, Divisional Engineer,
(Operation),A.P.E.P.D.C.L., Anakapally.

.....RESPONDENT

Petition under Sections 10 to 12 of Contempt of Courts Act praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to punish the respondent herein under Section 10 to 12 of Courts Act for flouting the orders of this Hon'ble Court passed in W.P.M.P.No.16962 of 2004 in W.p.no.13254 of 2004 dated 02.08.2004 and extended orders dated 02.09.2004.

Counsel for the Petitioner: Mr. N.M.KRISHNAIAH

Counsel for the Respondent :Mr.M.SUBBA RAO (S.C. for APEPDCL)

The Court made the following :

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COMMON JUDGMENT:

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Heard both sides and at their request, the main writ petition as well as contempt case are taken up together for disposal.

2. The petitioner, who is working as a Contract Junior Lineman with the respondents herein, filed the main writ petition seeking mandamus to declare the impugned orders of third respondent, vide Proceedings in Memo.No.DEE.O.AKP.AD.U. D.No.610/2004 dated 18.06.2004 terminating him from service on the ground of involvement in criminal case, as highly illegal, arbitrary and against the principles of

natural justice.

3. The main grievance of the petitioner is that having regard to the imputation as made in the orders, there cannot be any such termination, even though the petitioner happens to be a temporary employee. At the stage of admission, this Court granted interim direction in W.P.M.P.No.16962 of 2004 in W.P.No.13254 of 2004 dated 02.08.2004 suspending the order dated 18.06.2004 in Memo.No.DEE/O.AKP.AD.U. D.No.610/ 2004 for one month. Complaining that the said interim orders have not been complied with and the petitioner was not taken back into service, the petitioner filed contempt case in C.C.No.1639 of 2004 against third respondent in the writ petition.

4. In both the cases counter-affidavits have been filed by the respondents, contending that the petitioner, being a temporary employee, has no right for continuation in service and that he can be terminated even without any valid reasons, more so, being a contract employee. Therefore, there are absolutely no merits in the writ petition or in the contempt case.

5. Having considered the submissions made on either side and also on perusal of the material on record, the question that arises for consideration in these two matters is as to whether the impugned action on the part of third respondent herein dated 18.06.2004 is sustainable?

6. Before going into the correctness or otherwise of the impugned order, it is relevant to know the impugned orders passed, which reads as follows:

It is reported by the Asst. Engineer/CEO/Kotauratla that Sri Y.Narayana Murthy, Contract Jr. Lineman on yearly contract basis for a period of one year commencing from 01.08.2003 is absent to duty from 15.04.2004. On enquiry, it was noticed that he was involved in a Criminal Case and under remand in Crime No.13/2004 for registered by Station House Officer, Makavarapalem.

As his indulgence in a criminal case is in violation of agreement entered with APEPDC Ltd., and as per the Clause (iii) of the agreement in termination of services, the services of Sri Y.Narayana Murthy, Contract Junior Lineman, Kotauratla Section are dispensed with

from the date of his absent i.e. from 15.03.2004.

7. There is no dispute to the fact that the petitioner is a temporary employee. However, on a plain reading of the above said order, it is clear that the said order is not based on procedure by conducting any enquiry or giving any opportunity to the petitioner. Further, the very order was passed on the sole basis of the involvement of the petitioner in a criminal case in Crime No.13 of 2004, which was registered by the Station House Officer, Makavarapalem. On the face of it, it is not a simplicitor termination of a temporary employee, but certainly it amounts to termination with imputation, which is not sustainable and more so in the absence of any opportunity to the petitioner. Even the criminal case has not reached finality. Therefore, even without waiting for any ultimate result, the respondents sought to terminate the petitioner from service.

8. Reliance is also sought to be placed on Clause (iii) of the agreement entered into between the parties, which reads as follows:

“(iii) The Eastern Power Distribution Corporation Limited, Visakhapatnam or its officers having proper authority, without any prior notice to the candidate find to be prima facie guilty of any in-subordination intemperance, moral turpitude or other misconduct participation in Strikes/agitations/Union/ Association or of any breach or non-performance of any of the provisions of these conditions, or if otherwise found unsuitable for the efficient performance of his/her duties”.

9. Taking into account the source of power sought to be brought out on behalf of the respondents under the aforesaid clause (iii), it is clear that the impugned order do not, in any way, fit well within the parameters or mischief as contemplated under the aforesaid clause (iii). The very impugned order shows that it is not passed simply by invoking any such power under clause (iii). As already observed, this is not a simplicitor termination of a temporary employee, but it is termination with imputation. In view of the same, the respondent cannot take any shelter under clause (iii). In the circumstances, it has to be held that the impugned orders are totally vitiated, bad and are liable to be set aside.

10. The writ petition is accordingly allowed and the impugned orders are set aside.

11. Having regard to the final orders passed in the writ petition setting aside the impugned order, it is not necessary to go into the contempt case, at this stage, as it is too premature to see that any contempt is committed. Accordingly, contempt case is dismissed, with liberty to the petitioner to file a fresh contempt case in the event of non-implementation of the interim orders.

B.PRAKASH RAO, J

Dated: 2nd February, 2005.

Cs

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday, the 2nd day of February, Two Thousand and Five.

ASSISTANT REGISTRAR

To

1. The Chairman & Managing Director, A.P.Eastern Power

Distribution Co. Ltd., Vizag.

2. The Superintendent Engineer, A.P.E.P.D.C.L., Vizag.

3. The Divisional Engineer, A.P.E.P.D.C.L., Anakapally.

4. The Assistant Engineer Operation, A.P.E.P.D.C.L., Kotauratla,

Vizag.

5. Sri G.Prasada Rao, Divisional Engineer (Operation),

APEPDCL, Anakapally, Visakhapatnam District.

6. Two C.D. copies.